IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 15093 of 2005

Between:

M/s. Service Links International Ltd., 8-3-945/A/12-S1 Nagarjuna Nagar, Ameerpet, Hyderabad-73 rep by Director Smt. M.Rama Devi

..... PETITIONER

AND

1 The Deputy Director, Enforcement Directorate (Foreign Exchange

Management Act) No. 9/1 State Bank
Road, Behind India Garage, Bangalore.
2 Appellate Tribunal for foreign Exchange at Janpath New Delhi

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ order or direction, more particularly one in the nature of writ of Mandamus declaring the order of the 2nd respondent in Appeal NO. 268 of 2005 dated 20-5-2005 as illegal, causing under hardship to the petitioner and contrary to the provisions of Foreign Exchange Management Act 1999 and consequently direct the 2nd respondent-Appellate Tribunal to dispense with the deposit of penalty amount imposed by the Respondent NO.1 during the pendency of Appeal NO. 270 of 2005 on the file of the 2nd respondent.

Counsel for the Petitioner: MR.A.SUDARSHAN REDDY

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

The Court made the following:

ORDER: (per Sri JC, J)

Heard the learned counsel appearing for the petitioner and the learned Assistant Solicitor General appearing for the respondents.

This writ petition is filed with a prayer as follows: -

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the order of the second respondent in Appeal No.268 of 2005, dated 20.05.2005 as illegal, causing undue hardship to the petitioner and contrary to the provisions of Foreign Exchange Management Act, 1999 and consequently, direct the second respondent-Appellate Tribunal to dispense with the deposit of penalty amount imposed by the Respondent No.1 during the pendency of Appeal No.270 of 2005 on the file of the second respondent and pass such other order or orders as it deems fit and proper."

The petitioner-Company was found guilty of certain violations of the Foreign Exchange Regulation Act, 1973(the (hereinafter referred to as Act). As a consequence, a penalty amount of Rs.5,50,000/- was levied upon the petitioner-Company. Aggrieved by the same, the petitioner filed an appeal before the Appellate Tribunal under the Act along with an application seeking exemption from the condition of pre-deposit of the amount of penalty demanded from the petitioner-Company. By the impugned order, the Appellate Tribunal rejected the case of the petitioner. The order is a composite order insofar as the petitioner and two of its Directors are concerned, which reads as follows: -

> "The learned Counsel Shri P.Ojha pleaded that the appellant company is incurring losses for the last 3-4 years. But, when his attention is drawn to the asset of the Company, he pleaded that the financial hardship is required to be seen only from Profit and Loss Account as decided by the Allahabad High Court in M.C.Goyal Vs.UOI 1988 (35) ELT 449 (Allahabad). We are not impressed with the arguments of Shri P.Ojha. With regard to the appellant in Appeal No.269/05, he pleaded that the appellant is residing in foreign country and he is unable to send money for making pre-deposit. Further, in Appeal No.270/05 it is argued that the female appellant is a salaried person. Looking from the contents and the papers placed on record, it becomes clear that she is having annual agricultural income of about Rs.30,000/-, and the penalty amount is also not on the higher side on the appellant. In the above situation, it is difficult to dispense with the pre-deposit of the penalty amount in any of these appeals. Hence, the appellants are permitted to make pre-deposit of the respective penalties within 45 days from today failing which the respective appeals will be dismissed on this ground alone.
>
> The only consideration bestowed by the Appellate Tribunal insofar as the petitioner is concerned, is found in the first six lines of the order. The claim of the petitioner-Company that it has been incurring losses for the previous 3 to 4 years was brushed aside by the Appellate Tribunal without assigning any reasons."

To support the contention that the petitioner-Company has been incurring losses for the last 3 to 4 years, a copy of the balance sheet for the year 2004-2005 is placed before this Court indicating that the Company had incurred loss for the said year. Apart from that, it is stated in para No.5 of the affidavit, filed in support of the present writ petition, that the audited balance sheet for the assessment year 2003-2004 shows loss of Rs.4,73,616/- and for the assessment year 2004-2005 shows loss of Rs.2,66,711/-. It is also stated that the entire operations of the Company have been affected due to the fact that the various bank accounts of the petitioner-Company was attached by the Income Tax department by its various orders, the details of which may not be necessary for the adjudication of the present case.

In the circumstances, we are of the opinion that the Appellate

Tribunal erred in exercising its jurisdiction by not taking the relevant factors into consideration.

Accordingly, we deem it appropriate to dispose of the writ petition at the stage of admission with a direction that the second respondent may proceed with the hearing of the appeal in accordance with law without insisting on the condition of pre-deposit of the penalty amount, of course, subject to condition that the petitioner-Company deposits an amount of Rs.2,50,000/- (Rupees Two lakhs and fifty thousand only) within a period of six weeks from today. No order as to costs.

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J. CHELAMESWAR , J

14.07.2005

dr

___**_____** ***M.VENKATESWARA REDDY, J***

To

1 The Deputy Director, Enforcement Directorate (Foreign Exchange

Management Act) No. 9/1 State Bank
Road, Behind India Garage, Bangalore.

2 Appellate Tribunal for foreign Exchange at Janpath New Delhi

3 2 CCS to Assistant Solicitor General, High Court Buildings,

Hyderabad. (OUT)

4 2 CD copies